Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Review of the Commission's Regulations Governing Attribution of Broadcast Interests	)	MM Docket No. 94-150
Review of the Commission's Regulations and Policies Affecting Investment in the Broadcast Industry	)	MM Docket No. 92-51
Reexamination of the Commission's Cross-Interest Policy	)	MM Docket No. 87-154

REPLY COMMENTS OF M/C PARTNERS, THE BLACKSTONE GROUP, AND VESTAR CAPITAL PARTNERS

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I. INTRODUCTION AND SUMMARY

The comments filed in these proceedings, regarding the Federal Communications Commission's reexamination of its broadcast attribution rules, overwhelmingly applaud the Commission's recognition that the existing rules are antiquated and do not match the reality of the media marketplace of this decade. Almost all of the comments recognize that a secure position for broadcasting in the multimedia world of the twenty-first century depends upon more relaxed attribution rules.[1/] The parties represented

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1/ See, e.g., Comments of Fox Television Stations Inc. and Fox Broadcasting Company ("Fox Comments") at 7-8 ("[A] grave danger lies in enveloping broadcasters in regulations that artificially restrict their access to capital -- the danger that broadcasters will become too ensnared to effectively compete with cable, telecommunications companies, and other current and potential competitors.").

by this pleading (the "Commenting Parties")[2] wish to further comment on four topics discussed in these proceedings.

First, a majority of the comments endorse the arguments for increased thresholds for voting stock interests and for the retention of the nonattributable nature of debt and nonvoting stock interests that were advocated by the Commenting Parties. Second, the Commenting Parties endorse the clarifications of the attribution rules, proposed in some of the comments, that would justly allow limited partners in broadcast entities to perform some functions for, and to hold certain rights in, the partnership entity which are unrelated to the core operation of the broadcast licensee without sacrificing the nonattributable nature of their investments. Third, the Commenting Parties firmly oppose any formal review of the combined ownership influence of several nonattributable interests held by one investor in a broadcast licensee. Such a "second-tier" review would undercut the predictability of defined thresholds for each type of ownership interest and would severely curtail broadcast investment. The Commission should retain its present system of independent review of each type of ownership interest, with the ability to address *de facto* control where it arises. Finally, any changes to the attribution rules should apply only prospectively, leaving presently nonattributable interests nonattributable.

II. ATTRIBUTION RULES SHOULD BE RELAXED, NOT TIGHTENED

The Commission should follow the recommendations of most of the comments to relax the voting stock thresholds and not to label debt or nonvoting stock interests as attributable. The vast changes in the media marketplace over the past decade and the limited

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[2] M/C Partners, The Blackstone Group, and Vestar Capital Partners.

availability of financing for broadcast interests demand such an outcome.[3/] Several of the comments support the Commenting Parties' suggestion that the Commission should devise the thresholds to reflect a new focus on *control*, rather than on *influence*. The Commission's tireless search to pinpoint and label all holders of influence should end; instead, "[t]he Commission should recognize that control, and not some vaguely defined degree of influence, is the appropriate benchmark."[4/]

III. LIMITED PARTNERSHIP INTERESTS

A. Institute an Equity Ownership Benchmark

Numerous comments, like the Commenting Parties, support the introduction of an equity benchmark in the limited partnership arena: limited partnership interests below the benchmark should not be attributable interests, regardless of their compliance with the insulation criteria. Furthermore, whatever the benchmark settled upon for such interests, the Commenting Parties support a more relaxed threshold for certain widely-held limited partnerships.[5/] A higher threshold for such partnerships would recognize the nature of such partnerships as large combinations of mostly institutional investors rather than as closely-knit partnerships of a few individuals.

[3/] See Comments of Communications Corporation of America at 9 ("While lending to the broadcasting industry may no longer be in a state of crisis . . . the availability of financing to the broadcasting industry is still a concern.").

[4/] Fox Comments at 11.

[5/] See Comments of Freeman Spogli & Co., Incorporated at 14, suggesting an equity benchmark of 20% for interests in limited partnerships with at least $25 million in assets.

B. Insulation Criteria Should Be Refined

Many of the comments filed in these proceedings propose clarifications to the Commission's insulation criteria for limited partners. Limited partnership interests have become a more frequent vehicle for broadcast investment than they were a decade ago when the limited partnership insulation criteria were first promulgated; the Commission needs to revise the criteria. For instance, limited partners often seek, or are required to hold by state law, certain powers that do not implicate operational decisions and certainly do not afford any control over the licensee's programming decisions; retention of such powers should not render the limited partners attributable owners.

In its comments, CalPERS states that because of its fiduciary duty to its members and beneficiaries, CalPERS often demands the right to vote, along with other limited partners, on possible removal of the general partner "for cause."[6/] Under the present attribution rules, retention of such a right may render the interest attributable. Moreover, as CalPERS points out, some states, including California, require such a voting right for limited partners. The Commission should allow such rights to be held by "insulated" limited partners. The Commission must regard these as typical rights of limited partners who are seeking only to protect their investment; such rights do not realistically afford their holders any control or even any significant degree of influence over the operational aspects of the licensee.

Furthermore, the Commenting Parties support the position that a limited partner's provision of services wholly unrelated to the partnership's media activities should not render that partner's interest attributable. Specifically, the Commenting Parties argue

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6/ Comments of California Public Employees' Retirement System at 6.

that services such as investment banking[7] and insurance coverage should be permissible ones even for "insulated" limited partners. Investors in broadcast entities now include large entities that invest with one arm and provide non-media-related services with the other; the Commission should look beyond the form of such involvement and allow insulated limited partners to perform certain "innocent" services for the partnership entity.

IV. REJECT SECOND-TIER REVIEW OF NONATTRIBUTABLE INTERESTS

The Commission should retain its current system of analyzing different types of ownership interests independently. Such independent analysis leads to valuable predictability for investors pondering specific types of investments. The Commission's independent thresholds and standards for different types of interests should stand alone. Any second-tier level of review, whether it be the continued dark cloud of the cross-interest policy or some combined analysis of several types of nonattributable interests in a licensee, should be swiftly rejected.

The Commission already holds the power to label certain parties who otherwise escape the reach of the individual attribution thresholds as having *de facto* control of the licensee.[8] There is no need to institute a formal administrative process or threshold for parties whose combined ownership and non-ownership interests may convey some sort of influence.[9] As CBS, Inc. comments, "the price of achieving regulatory perfection in

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[7] See Comments of the Goldman Sachs Group, L.P. at 5.

[8] 47 U.S.C. § 73.3555 Note 1.

[9] See Comments of Tribune Broadcasting Company at 5, noting that the Commission's present rules eviscerate any need to weaken the single majority shareholder exclusion of even forty-nine percent minority shareholders from attribution ("Rather than change

classifying transactions at extreme ends of the spectrum should not be the regulatory unpredictability which impedes all transactions and discourages efficient capital formation in the industry as a whole."[10/] Broadcasting licensees also criticize any proposal to institute an administrative review of combined holdings; Westinghouse Broadcasting Company (Group W) states that "[t]o attempt to codify in advance those combinations of factors which would automatically make non-attributable interests attributable invites overly restrictive standards which would unwisely preclude legitimate business arrangements."[11/]

Capital Cities/ABC, Inc. argues for such a second-tier review but concedes that the ultimate standard in such a case-by-case review "should be one of 'control.'"[12/] Though such a proposal has a superficial appeal, the Commission should recognize that its effect on broadcast financing could be severe, far out of proportion to the supposed abuses it is designed to capture. Over the past decade, there have been numerous broadcasters that have needed to recapitalize their balance sheets, perhaps because they had become over-leveraged and unable to service their debt or perhaps because they needed additional capacity to acquire stations to remain competitive. In either case, the recapitalization is often undertaken with new equity that may account for more than 50% of the total equity--thus

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its single majority shareholder attribution policy, the FCC can utilize its already existing policies and precedents to identify and to redress rare situations in which minority shareholders have control or a level of influence in the licensee that transcends its [sic] minority ownership.")

10/ Comments of CBS, Inc. at 4; see also Comments of Freedom of Expression Foundation, Inc. at 21 ("[A]ny attempt to define standards for what nonequity financial and multiple business relationships are permitted and in what combinations will create a regulatory nightmare that is fraught with peril.").

11/ Comments of Westinghouse Broadcasting Company (Group W) at 6.

12/ Comments of Capital Cities/ABC, Inc. at 16.

triggering the test which Capital Cities/ABC proposes--but which does not represent control.[13] The new equity may be in the form of preferred, non-voting common, or even low-voting common stock, in any case designed so that control remains with incumbent management. Under the Capital Cities/ABC test, such new investors would not know whether or not they were taking an attributable interest until there was a submission to, and determination by, the Commission that the package of interests was not attributable. Thus, the CapitalCities/ABC proposal actually would impose a new requirement for Commission action before certain broadcast investments could be made, a requirement that would be a step backward in the efforts to minimize delay and uncertainty and to facilitate investment.

Moreover, conducting a formal review of combined interests above a certain threshold is akin to labelling nonvoting stock or debt interests as potentially attributable. The comments of Capital Cities/ABC, Inc. do note that debt interests should not be attributable, because "there is no direct influence or control which pertains to them."[14] Such reasoning should likewise exclude debt and nonvoting stock interests from any second-tier review; these holdings do not, either on their own or in conjunction with other interests, afford their owners any control over a broadcast licensee.

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[13] Particularly in the case of over-leveraged broadcasters, the existing equity may have become very small or even negative as debt service obligations increased. Thus, new equity can easily represent more than 50% of the total equity. Incumbent management is often given the right to "earn back" more of the company's equity by meeting specified financial targets.

[14] Comments of Capital Cities/ABC, Inc. at 13.

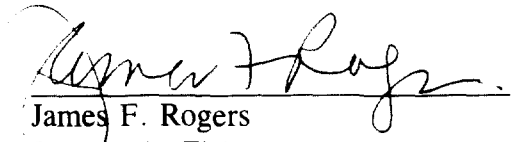
V. ANY RESTRICTIVE CHANGES TO ATTRIBUTION RULES SHOULD ONLY APPLY PROSPECTIVELY

The Commenting Parties endorse the arguments of numerous comments that any restrictive changes to the attribution rules should only apply prospectively; current holdings of nonattributable interests should remain nonattributable. Investors have relied on the nonattributable nature of debt interests or nonvoting stock in selecting these vehicles for broadcast investment. Similarly, individuals and institutions have relied on the single majority shareholder exception to attribution in making significant voting stock investments in licensees controlled by another party. Such investments should be "grandfathered" as nonattributable, whatever modifications may come from this proceeding. As Westinghouse Broadcasting Company points out, the multiple ownership rules themselves contain such a "grandfather" provision.[15/]

[15/] Comments of Westinghouse Broadcasting Company (Group W) at 8, citing 47 C.F.R. § 73.3555 Note 4 (stating that the multiple ownership rules, "will not be applied so as to require divestiture, by any licensee, of existing facilities.").

Respectfully submitted,

M/C Partners
The Blackstone Group
Vestar Capital Partners

By: 

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